

EXHIBIT AAA
Petition to De-list Waterford

VIRGINIA:

IN THE COMMONWEALTH OF VIRGINIA

MILARI MADISON)
)
Petitioner)
)
v.)
)
DEPARTMENT OF HISTORIC RESOURCES)
)
Serve:)
Kathleen S. Kilpatrick)
Director)
2801 Kensington Avenue)
Richmond, Virginia 23221)
)
Respondant.)

**PETITION TO DELIST WATERFORD HISTORIC DISTRICT
FROM THE VIRGINIA LANDMARKS REGISTER**

COME NOW Milari Madison (the "Petitioner") and move the Virginia Department of Historic Resources ("Commission") to de-list the Waterford Historic District, Waterford, Virginia, from the Virginia Landmarks Register ("Register") and/or national register. In support of this Petition, the following is respectfully shown.

The Petitioner is a resident of the Commonwealth of Virginia and owner of 40153 Janney Street, Waterford, Loudoun County, Virginia (the "Property"). The Property was acquired by the Petitioner on or about July 15, 2003. The Petitioner owns property within the Waterford Historic District, both within the Waterford Historic District and the Waterford National Landmark (attached at Exhibit 1). The designation is used as a basis for limiting the Petitioner's property rights. As such, the Petitioner is directly interested in Waterford's faulty, unlawful, and obsolete landmark designation, and placement upon the Register (s).

Preserving the credible history of this country is indispensable to our national identity. The Petitioner fully supports the efforts of the Commission in this regard. There are, however, instances where exaggerated claims of “historical significance” and “unaltered” preservation limit the constitutional rights of property owners to such an extent that property owners are stripped of any reasonable use of their property, based on the whimsy and malice of the government.

Often, when local municipalities seek to restrict the rights of property owners, the designation by the Commission of the property as an historic landmark is an unassailable justification for such limitations (attached as Exhibit 2).

Pursuant to 17VAC5-30-90, the Waterford Historic District no longer meets the criteria for listing and remaining on the Register as provided in 17VAC5-30-40 through 17VAC5-30-70. The Commission is obligated to review whether a designated area continues to meet the criteria to remain on the Register, or to be dutifully and properly removed. It is an undisputed fact that no significant event of state or national importance ever occurred in Waterford, that Waterford has suffered gross alterations over the decades, has befallen a corrupted landscape, is altered, the qualities for which it was originally designated have been lost and destroyed since placement upon the Register.

Waterford No Longer Meets The Criteria For Which It Was Designated

Waterford no longer meets the criteria for which it was designated an Historic Landmark. Its statement of significance reads:¹

¹ Attached as Exhibit 3.

Originally called Milltown because of the small industries there, the name was soon changed to Waterford in honor of Waterford, Ireland. The town was incorporated in 1810, and by 1834 it was a flourishing village of four hundred persons with some seventy houses, a tannery, a chair-maker, and a boot and shoe manufacturer. At one time there was a woolen factory as well as several stores, a bank and tavern. Through careful private preservation efforts, most of Waterford remains as it was in the nineteenth century.

The notion that Waterford remains today, as it was in the nineteenth century is simply false (attached at Exhibit 4). The tannery, chair-maker, boot and shoe manufacturer, woolen factory, tavern, and bank are defunct and no longer exist. In fact, no commercial *activity* that existed in the town of Waterford in the “nineteenth century” exists in Waterford today. Waterford is replete with modern conveniences, such as 3-car garages, paved roads, new houses, ubiquitous additions on existing houses, a sewage treatment facility etc.

The statement of significance further reads:²

Situated in the Loudoun Valley seven miles northwest of Leesburg, the mill town of Waterford remains virtually unchanged from its eighteenth and nineteenth century appearance . . . A major factor in Waterford's character is the unspoiled open rolling landscape which surrounds the village and enhances its integrity

Waterford is no longer a mill town and it is not as it was in the eighteenth and nineteenth centuries. The only remaining but inoperable mill located at 40105 Main Street lost the rear portion of the building and serves as “storage” for the Waterford Foundation (deed year 1990) and is lacking maintenance (see Exhibit 5). The village itself contains modern additions and rebuilds to virtually every habitable building in Waterford, including the utilization of synthetic twentieth century building products. As reflected in the attached pictures, Waterford is quite different from its eighteenth and nineteenth century appearance, and continues to be altered (see Exhibit 4).

² See Exhibit 3.

One example of the erosion of Waterford's integrity is in 1989, a house existing at the time of designation was torn down and a modern house, with a garage, was built in its place. The house was identified as the Raymond Paxson store, 15634 Second Street, and served as a functioning residence. Demolition was approved by the Loudoun County Historic District Review Committee. The garage is in one of the many alleys that used to run throughout Waterford in the eighteenth and nineteenth centuries, and at the time of designation, but no longer exist. Additionally, another alley, in the same geographic area, was legally abated by the current owners of the surrounding property (attached at Exhibit 6). It should be noted that house numbers, placed upon residences, did not occur until after the placement of Waterford on the Register.

Waterford has additionally ceased to meet the criteria for designation because its setting, which was once agricultural, open and rolling hills, has been lost or destroyed due to development (*see* Exhibit 7). In the case of Waterford, only 10% of the homes that now surround Waterford Village and the National Historic Landmark were built prior to 1970 (attached as Exhibit 8), a far cry from "unspoiled". Since 1998, the date in which data is available on-line to the Petitioner, well over 1,901.03 of the surrounding acreage is no longer an agricultural district (attached at Exhibit 9), as required to maintain the designation for placement upon the Register and set forth in the criterion. Without the complementation of the "unspoiled open rolling" setting, within an "intact farm village", coupled with the loss of the agricultural setting, the basis for designation is obliterated.

Even more fatal, since 1970, large farms have been subdivided, built upon and or await development, such as the Bishop Farm, the Brown Farm, the Melrose Farm, the Kalnasy Farm, Beacon Hill, the Carr Properties, the Rufner Property, the Shattuck Property, the Hutchinson

Properties, the Peacock Farm, Nichols Farm, Phillips Farm, and the Debutts Farm. Virtually all property adjacent to and surrounding the village has been subdivided (attached at Exhibit 10). By letter dated 2003, the Loudoun County Department of Planning, predicts the fate and accurately describes the Waterford Historic District and landmark as a "... general failure over the past 30 years" ... (see Exhibit 10). A significant portion of the altered, assaulted, and subdivided land has been at the hands of the Waterford Foundation, a purported steward. The Waterford Foundation continues to exploit the immediate area for the purposes of raising money but at the detriment to the basis for which Waterford can rightfully remain on the Register. Along Brown's Lane, along Old Waterford Road, Milltown Road, Loyalty Road, and Bond Street (within the Village itself), the Waterford Foundation is responsible for numerous residences, garages, and barns newly built. The land is impossibly utilized for agriculture and pastoral preservation, now spoiled, by the Waterford Foundation. Loss of integrity (through alteration, addition, or demolition) is the most common reason for the withdrawal of designation on the Register.

New homes and buildings have been built throughout Waterford Village, such as 15626 Second Street built in 1940, 15609 High Street built in 1949, 15577 High Street built in 1955, 15679 Factory Street, built in 1970, 15653 Factory Street built in 1979, 15584 Second Street built in 1987, 15634 Second Street demolished and built in 1989, 40171 Janney Street built in 1991 with a three car garage, 40170 Bond Street built in 1994 with a swimming pool, and 40164 Bond Street built in 1995. In addition, large and character-altering additions were added to numerous existing structures, destroying the streetscape and with absolute disregard of the criteria for designation.

The integrity of Waterford as "unaltered," is no longer true in many aspects. Large trees have been lost and homeowners have undertaken haphazard planting and building in the right-of-way. Synthetic and modern building materials have been utilized, such as asbestos siding, aluminum and vinyl siding, simulated divide windows, asphalt pavement, skylights, asphalt roof shingles, french doors, street lights, street signs, trash containers, podium stands, house numbers etc. Numerous garages and outbuildings have been erected, cars crowd the paved streets, and the alleys that once were utilized have been built upon and vacated (*see* Exhibit 11). Waterford no longer remains as it was in the "nineteenth century". The addition of a 1979 public sewage treatment facility, marks one of the main access routes into the Village, along Old Wheatland Road and adjacent to the historic district. The placement of the sewage treatment facility renders the surrounding land, neither agricultural nor unspoiled.

The designation categories by the Commission identified Waterford as "private residence" and "village", fail to remain true as the character of Waterford has changed. School A is used for educational purposes. The insurance company operates a business along High Street. Numerous buildings are now owned by the Waterford Foundation and sit mostly empty and unused, not "occupied". Some buildings owned by the Waterford Foundation are rented for events, including vendor booths during the annual Waterford Fair providing for "entertainment".

The designation materials state the areas of interest are "art", "commerce", and "religion/philosophy" as justification for the designation. Although, there is no standard, guideline, or rationale as to how these categories were selected in 1969, art and commerce are essentially non-existent. There is no "art" significance remaining in Waterford and churches have been closed. "Commerce" is limited to the small market with asbestos siding, and a coke machine. The Colored Church, at 40125 Bond Street, was purchased from the African American

community in 1999 by the Waterford Foundation and no longer conducts religious services. The church on Main Street has been converted into a private residence in 1994. The Hardware Store, located at 15502 Second Street, is vacant. The Tin Shop, located at 15481 Second Street, purchased by the Waterford Foundation in 1984, is vacant. The Forge, located at 15484 Second Street, is vacant. There is no longer a functional mill, tannery, chair-maker, tavern, shoe and boot manufacturer, bank, butcher, cattle dealer, coach and wagon builder, dentist, druggist, florist, saw mill, undertaker, or tavern. The Paxson Raymond Store was demolished in 1989. Moreover, all of the principle farms, such as that of J.W. Aldridge, Robert M. Preston, Obed J. Piermont, Dr. H. Van Devanter, J.E. Walker, B. F. Hagan, A.W. Phillips, T.H. Van Devanter, L.T. Jones, Jas. M. Walker, William H. Russell, J.H. Chapman, Chas. W. Fadely, Robert T. Wright, John Compton, G.W. Paxson, and C.E. Paxson, are gone, and as such, have no contribution to commerce or agriculture, and destroys the fiction that Waterford is an intact example of the eighteenth and nineteenth century, as well as further demonstrates that Waterford is no longer a farm village in an agricultural setting.

Waterford Was Unlawfully Established By The Virginia Landmarks Commission

Purporting to act under the authority conferred by enabling legislation, Virginia Code 10-138(a): Acts of Assembly, 1966, the Virginia Landmarks Commission (the "Commission") did not have the force of law to establish historic districts and limit property rights. The Guidelines of the Virginia Department of Historical Resources defines "historic structure" as follows:

No structure or site shall be deemed a historic one unless it has been prominently identified with, or best represents, some *major* aspects of the cultural, political, economic, military, or social history of the state or nation, or has had a

relationship with the life of an historic personage or event representing some major aspect of, or ideals related to, the *State* or *nation*.

The erroneous designation of the “Waterford Preservation Zone”, now referred to as the “Waterford Historic District” by the Commission on or about May 13, 1969 was invalid because the Commission was only able to designate as historic landmarks only individual historic buildings and archeological sites that constituted significant historical, architectural and archeological sites and to prepare a register of those designated *individual* buildings and sites. Nothing in the Virginia Code effective at that time granted authority to the Commission to designate an entire geographic area, town, or village (i.e., Waterford) as a registered state landmark. The Waterford Historic District is invalid because the power granted to the Commission in 1966 (see Virginia Code 10-138 (g)), did not authorize entire historic districts themselves to be “designated” as landmarks, included in the official register of lawfully designated “buildings and sites”, or otherwise recognized as “registered landmarks”. The Commission also failed to identify any structures in Waterford that has a relationship to a major aspect of, or ideals related to, the history of the State or nation (Section 10-138(a)).

Nothing in the Virginia Code effective in 1966 through 1988 bestowed authority upon the Commission to establish an historic district for an area that did not contain at least one historic landmark. In *Worley v. Town of Washington*, 65 Va. Cir. 14, 2004 WL 3133200 (Va.Cir.Ct.), the Court found that if “the Town does not contain any such structures [structures individually designated as historical landmarks] then the District identified by the Commission was inappropriately designated as a landmark” (attached at Exhibit 12).

The Worley decision also instructs that an “historic district” is defined as a “geographically designated area, which contains a significant concentration of historic buildings, structures, or sites, sharing a common historical, architectural or cultural heritage (see *Worley*).

See also, *Virginia Historic Landmarks Commission, et. al. v. Board of Supervisors of Louisa Co., et.al.*, 217 Va. 468, 473 (1976)(“*Louisa Co.*”). Just as in *Worley*, the Commission’s meeting minutes from May 19, 1969 do not indicate that the Waterford Historic District comes within this definition making the designation invalid. The boundary lines were arbitrarily set forth without dutiful explanation, reason, or rationale.

The Commission failed in another aspect under Virginia Code 10-139, Acts of Assembly, 1966, ch. 632. The Commission failed to notify the taxing authority of the municipality. Section 10-139 states:

In any case in which the Commission designates a structure or archeological site as a certified landmark, it shall notify the official having the power to make assessments of properties for purposes of taxation within the County or city in which the structure or site is located and such designation and notification shall be, prima facie, evidence that the value of such property for commercial, residential or other purposes is reduced by reason of its designation.

As reflected in Exhibit 13, attached hereto, the Loudoun County Commissioner of Revenue or tax assessor, was not notified by the Commission and no reduction on the assessed value of the properties in the Waterford region was made, further invalidating the establishment of the Waterford Historic District. The state failed to satisfy the requirement to provide a list of the properties included within the Waterford Historic District and National Landmark.

Waterford Should Be Removed From The Register

The standards for evaluating the significance of properties were developed to recognize the accomplishments of all *people* who have made a significant contribution to our country’s history and heritage, none of which are identified or substantiated in designation materials. Instead, alterations to a faulty and misplaced district remain underway.

The quality of significance in American history, architecture, archeological, engineering, and culture must be present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded or may be likely to yield, information important in prehistory or history.

The entire basis, authority, standards and guidelines that designated Waterford a Landmark and Historic District is an assault on the credibility of the Register. The explosive development in and surrounding Waterford over the recent decades has eroded the specificity of the designation. The criteria relied upon to place Waterford on the Register is based on ambiguity, lack of standards, vague, subjective and unlawful conclusions never dutifully specified or substantiated.

Given the lack of standards and guidelines relied upon in making numerous determinations in this process, professional and prejudicial errors were bountiful. The documentation and meeting minutes fall short of validating claims of state and national importance. The John Lewis survey book of the properties was completed in 1978, which was the base inventory of structures in Waterford, and years *after* such designations and determinations were made. The reliance on a book, by Loudoun County, that had not been completed placed the cart before the horse. The boundaries were drawn out in an unspecified

and prejudicial manner to, in part, satisfy the whimsy of the Loudoun County Board of Supervisor members at that time, and the Commission.³

The *Worley* decision also instructs that an “historic district” is defined as a “geographically designated area, which contains a significant concentration of historic buildings, structures, or sites, sharing a common historical, architectural or cultural heritage.” See *Worley* at page 3. See also, *Virginia Historic Landmarks Commission, et. al. v. Board of Supervisors of Louisa Co., et al.*, 217 Va. 468, 473 (1976)(“*Louisa Co.*”). Just as in *Worley*, the Commission’s meeting minutes from May 19, 1969 do not indicate that the Waterford Historic District comes within this definition making the designation invalid. The boundary lines were arbitrarily set forth without dutiful explanation or reasons.

Yet another reason the creation, adoption, designation, and listing of Waterford as an Historic District on the Register must fail is that because areas and structures in the Waterford Historic District “are not truly worthy of historic preservation as defined in the Enabling Statute.” then the Ordinance is void for that reason alone.” See *Worley* at page 6 and new buildings, structures, and additions in Exhibit 4.

Placement On The Register Results in a Violation of Rights

Decisions related to the historic designation and placement on the Register have been unreasonable and unlawfully arbitrary and discriminatory insofar as it fails to provide a rational basis or explanation afforded to the Petitioner and to others who sought to and demolished

³ Attached at Exhibit 14 are signs indicating the boundaries for the National Landmark. At the point of the signs, the adjacent and surrounding properties have been all built in the recent decade.

structures within the Historic District, and the process dictated by the Commission to de-list. Such discrimination is not substantially related to the public health, safety, welfare or any legitimate public purpose that lawfully may be included in a zoning ordinance pursuant to Virginia Code § 15.1-489 and its successor statute 15.2-2283, or, as applicable, Virginia Code § 15.1-503.2 and its successor statute, Virginia Code § 15.2-2306. In addition, the decision violated Virginia Code § 15.2-2282, which is the statutory reaffirmation of the equal protection doctrine.

To the extent the regulations contained in the Ordinance are a result of the listing on the Register, support or otherwise provide a basis for the decisions specific to the Petitioner, the decisions were unreasonable on face and bear no rational relationship to permissible state objectives sanctioned or permitted by Virginia Code § 15.1-489 or its successor statute, Virginia Code § 15.2-2283, or, as applicable, to Virginia Code § 15.1-503.2 its successor statute. Virginia Code § 15.2-2306, or to any other provision of the Code of Virginia.

Article I, Section 11, and Section 58 of the Constitution of Virginia, as well as the Fifth and Fourteenth Amendments of the Constitution of the United States, prohibit the government from taking or damaging private property for public use without just compensation. The Petitioner's property was damaged when appurtenant rights connected with the Property were directly and specifically affected by the arbitrary, capricious and unreasonable application of the Historic District Ordinance to the Property and the unlawful decisions. The decisions worked an unconstitutional dislocation of specific rights contained in Plaintiffs' bundle of property rights -- namely, the right of unfettered use, enjoyment, and the vested right to remove the remnants of the derelict and unsafe structure to construct a dwelling on the property without complying with the unreasonable, arbitrary, capricious, unlawful and invalid Historic District Ordinance, and

without the unwarranted, unreasonable, arbitrary and capricious interference visited upon the Petitioner. The Petitioner is hindered by Ordinances and restrictions due to the very nature of the historic designation by the Commission as it remains in effect today.

The placement upon the Register and continued designation has inflicted a direct and special injury on the Property and diminished its value by unreasonably limiting vested rights and what the Petitioner may lawfully construct on the Property. Such designation unreasonably delayed and prohibited the removal of the remnants of a derelict and unsafe structure which, in turn, unreasonably delayed or prohibited the construction of a single-family dwelling on the Property, which is a use permitted by right in the zoning use of the district, and inflicted economic harm in damage and pecuniary losses to the Petitioner.

The manner in which the Virginia Department of Historic Resources, the Commission, has arbitrarily set forth to the Petitioner to file this Petition to de-list, may arise to the violation of Petitioner's constitutional rights to due process of law under the Constitution of Virginia and the Fourteenth Amendment of the Constitution of the United States of America (attached at Exhibit 15). By manipulating the process in this fashion, the Commission seeks to gain an unfair, improper and unlawful advantage by crafting *ad hoc* procedures specific for the Petitioner. Also attached at Exhibit 15, is a request for information regarding the purported advice by the Office of the Attorney General, which in violation of FOIA, has not been responded to nor answered. This is manifestly unjust and constitutes a further denial of procedural due process rights under the Constitution of Virginia and the Fourteenth Amendment to the Constitution of the United States of America.

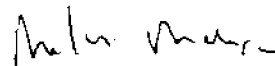
The Petitioner is, and was, at all pertinent times, a citizen of the United States of America and of the Commonwealth of Virginia.

Virginia Code §1-13.17 provides that "[w]hen the council or authorities of any city or town, or any corporation, board, or number of persons, are authorized to make ordinances, bylaws, rules, regulations or orders, it shall be understood that the same must not be inconsistent with the Constitution and laws of the United States or of this Commonwealth." By its arbitrary and capricious manner in dealing with the Petitioner, under color of the Historic District and made up procedure, subjected the Petitioner to a willful and deliberate deprivation of rights, privileges, or immunities, secured to them by the Constitution United States of America and the laws of the Commonwealth of Virginia, as defined in the U.S.C., 42 U.S.C. § 1983.

In order to protect all of the Petitioner's rights, privileges, and immunities under the Constitution and laws of the United States and the Commonwealth of Virginia, and to discourage future action in the like, and to satisfy Virginia law related to the de-listing of sites from the Register, based on the criterion originally set forth and now eroded, I request that the Waterford Historic District be de-listed, and with the Petition before the Commission, that the designation of the Waterford Historic District be invalidated, void, and or nullified specific to the Commission's designation.

The foregoing is true and correct to the best of my knowledge.

Respectfully submitted,



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Date: April 13, 2007